

This is the second appeal before the Board. Appellant, a 40-year-old welder, injured his lower back on July 1, 1987. The Office accepted a claim for low back strain. It commenced payment of temporary total disability compensation. By decision dated January 16, 1998, the Office terminated appellant's compensation and entitlement to medical benefits. By decision dated July 9, 1998, an Office hearing representative affirmed the January 16, 1998 termination

decision. In a September 21, 2001 decision,<sup>1</sup> the Board reversed the Office's decisions. The Board found that the Office improperly relied on a medical report which was not sufficiently rationalized to terminate appellant's compensation benefits. The complete facts of this case are set forth in the Board's September 21, 2001 decision and are herein incorporated by reference. Appellant's entitlement to disability compensation was reinstated.

By letter dated February 8, 2006, the Office notified appellant to submit a medical report on his current condition. The Office advised appellant to submit a medical report within 30 days or it would refer him for evaluation. Appellant did not respond.

By letter dated June 28, 2006, the Office referred appellant for examination with Dr. Bunsri T. Sophon, a specialist in orthopedic surgery, in order to obtain an assessment of his current condition. The letter advised her that the examination was scheduled for July 12, 2006. Appellant failed to appear at the scheduled July 12, 2006 appointment.

By letter dated July 12, 2006, the Office issued a notice of proposed suspension of compensation based on appellant's failure to appear at the scheduled July 12, 2006 examination. The Office noted that, under section 8123(d) of the Federal Employees' Compensation Act, an employee's right to compensation is subject to suspension if the employee refuses to submit to or cooperate with a medical examination. The Office stated that appellant had 14 days to explain why he failed to keep the appointment with Dr. Sophon. If he did not respond or provide good cause for refusing to keep the appointment, his entitlement to compensation would be suspended until he agreed to attend and cooperate with the examination as directed. Appellant did not respond to this letter.

By decision dated July 27, 2006, the Office suspended appellant's right to compensation effective August 6, 2006 based on his failure to attend the medical examination scheduled with Dr. Sophon on July 12, 2006. The Office found that appellant failed to submit an explanation justifying his failure to attend the medical evaluation.

### **LEGAL PRECEDENT**

Section 8123(a)<sup>2</sup> of the Act provides:

"An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required...."

The Board has held that a time must be set for a medical examination and the employee must fail to appear for the appointment, without an acceptable excuse or reason, before the

---

<sup>1</sup> Docket No. 99-1977 (issued September 21, 2001).

<sup>2</sup> 5 U.S.C. § 8123(a).

Office can suspend or deny the employee's entitlement to compensation on the grounds that the employee failed to submit to or obstructed a medical examination.<sup>3</sup>

The Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, 2.810.14(d) (July 2000), provides:

*"Failure to Appear.* If the claimant does not report for a scheduled appointment, he or she should be asked in writing to provide an explanation within 14 days. If good cause is not established, entitlement to compensation should be suspended in accordance with 5 U.S.C. § 8123(d), until the date on which claimant agrees to attend the examination."<sup>4</sup>

### ANALYSIS

The Office informed appellant by letter dated June 28, 2006 that it was referring him for a medical examination in light of his failure to submit an updated medical report on his current medical condition. The time for the medical examination by Dr. Sophon was set, appellant was duly advised of the scheduled appointment and failed to appear for medical evaluation. Appellant did not present any acceptable excuse or reason for his failure to appear. Following notice that appellant failed to appear for examination by Dr. Sophon, the Office, in a July 12, 2006 letter, allowed him 14 days to explain why he failed to keep the July 12, 2006 appointment. He was notified that if he did not respond or if his reasons were found unacceptable, his entitlement to compensation would be suspended until he agreed to submit to examination as directed. Appellant failed to respond to this letter.

The Board finds that the Office properly suspended appellant's entitlement to compensation due to his failure to keep the medical appointment on July 12, 2006. Appellant was properly notified of the reasons necessitating his referral for examination by Dr. Sophon and he failed to submit any justification for failing to keep the appointment. Accordingly, the Board finds that appellant's failure to keep the July 12, 2006 appointment with Dr. Sophon constituted a refusal to submit to a medical examination without good cause. The Office properly invoked the penalty provision of section 8123(d) of the Act and suspended appellant's compensation effective August 6, 2006.<sup>5</sup> The Board will affirm the July 27, 2006 Office decision.

### CONCLUSION

The Board finds that the Office properly suspended appellant's compensation for refusing to submit to a medical examination that he was directed to undergo.

---

<sup>3</sup> *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Herbert L. Dazey*, 41 ECAB 271 (1989); *Delores W. Loges*, 38 ECAB 834 (1987).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

<sup>5</sup> 20 C.F.R. § 10.323 states: "If an employee refuses to submit to or in any way obstructs an examination required by [the Office], his ... right to compensation under [the Act] is suspended until such refusal ... stops."

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 10, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board